

if such transferee were the manufacturer, producer, or importer of the article. The following examples illustrate this rule:

(1) The surviving spouse, child or children, executors or administrators, or other legal representatives, as the case may be, of a deceased manufacturer, producer, or importer of taxable articles, incur liability for tax on all such articles sold by them.

(2) A receiver or trustee in bankruptcy who under a court order conducts or liquidates the business of a manufacturer, producer, or importer of taxable articles, incurs liability for tax on all taxable articles sold by him, regardless of whether the articles were manufactured, produced, or imported before or after he took charge of the business.

(3) An assignee for the benefit of creditors of a manufacturer, producer, or importer incurs liability for tax with respect to all taxable articles sold by him as such assignee.

(4) If one or more member of a partnership withdraw, or if new partners are admitted, the new partnership so constituted incurs liability for tax on all taxable articles sold by it regardless of when such articles were manufactured, produced, or imported.

(5) A person who acquires title to taxable articles as a result of default of the manufacturer, producer, or importer pursuant to an agreement under the terms of which the articles were pledged as collateral incurs liability for tax with respect to his sale of the articles so acquired.

(6) A person who succeeds to the business of a manufacturer, producer, or importer of taxable articles, such as:

(i) A corporation which results from a consolidation, merger, or reorganization;

(ii) A corporation which acquires the business of an individual or partnership; or

(iii) A stockholder in a corporation who, after its dissolution, continues the business;

incurs liability for the tax on all taxable articles sold by such person. However, where a manufacturer, producer, or importer sells only his assets, rather than ownership of his business, he incurs liability for tax on the sale of any

taxable articles included in such assets.

(b) *Transfer of title to damaged articles.* If title to a damaged taxable article is transferred by the manufacturer, producer, or importer thereof to a carrier or insurance company in adjustment of a damage claim, such transfer is not considered a taxable sale of the article. If the article is usable, even though damaged, the carrier or insurance company incurs liability for tax on its sale, lease, or use of the article. Where the article has been damaged to the extent that its only value is as scrap, and it is not restored to usable condition, sale thereof by the carrier or insurance company is not subject to tax.

Subpart K—Exemptions, Registration, Etc.

§ 53.131 Tax-free sales; general rule.

(a) *In general.* Section 4221(a) of the Code sets forth the following exempt purposes for which an article subject to tax under chapter 32 of the Code may be sold tax-free by the manufacturer, producer, or importer:

(1) For use by the purchaser for further manufacture, or for resale by the purchaser to a second purchaser for use by such second purchaser in further manufacture,

(2) For export, or for resale by the purchaser to a second purchaser for export,

(3) For use by the purchaser as supplies for vessels or aircraft,

(4) To a State or local government for the exclusive use of a State or local government, and

(5) To a nonprofit educational organization for its exclusive use.

Section 4221(a) of the Code applies only in those cases where the exportation or use referred to is to occur before any other use, and where the seller, first purchaser, and second purchaser, as may be appropriate, have registered as required under section 4222 of the Code and paragraph (a) of § 53.140. See paragraph (c) of this section for provisions relating to evidence required in support of tax-free sales. See § 53.141 for exceptions to the requirement for registration. Where tax is paid on the sale of an article, but the article is used or resold for use for an exempt purpose, a

claim for credit or refund may be filed in accordance with and to the extent provided in sections 6402(a) and 6416 of the Code, and the regulations thereunder (§§ 53.161 and 53.171–53.186).

(b) *Manufacturer relieved of liability in certain cases*—(1) *General rule.* Under the provisions of section 4221(c) of the Code, if an article subject to tax under Chapter 32 of the Code is sold free of tax by the manufacturer of the article for an exempt purpose referred to in section 4221(c) of the Code and paragraph (b)(2) of this section, the manufacturer shall be relieved of any tax liability under chapter 32 of the Code with respect to such sale if the manufacturer in good faith accepts a proper certification by the purchaser that the article or articles will be used by the purchaser in the stated exempt manner. See paragraph (b)(2) of this section for a list of the exempt purposes referred to in section 4221(c) of the Code.

(2) *Situations wherein section 4221(c) of the Code is applicable.* The following are situations wherein section 4221(c) of the Code is applicable with respect to sales made tax free on the assumption that one of the following sections of the Code provides exemption for such sales:

- (i) Section 4221(a)(1) of the Code, to the extent that it relates to sales for further manufacture by a first purchaser (see § 53.132),
- (ii) Section 4221(a)(3) of the Code, relating to supplies for vessels and aircraft (see § 53.134),
- (iii) Section 4221(a)(4) of the Code, relating to sales to State or local governments (see § 53.135),
- (iv) Section 4221(a)(5) of the Code, relating to sales to nonprofit educational organizations (see § 53.136).

(3) *Situations wherein section 4221(c) of the Code is not applicable.* The relief from liability for the payment of tax provided by section 4221(c) of the Code is not applicable with respect to sales made tax free on the assumption that one of the following sections of the Code provides exemption for such sales:

- (i) Section 4221(a)(1) of the Code, to the extent that it relates to sales for resale to a second purchaser for use by the second purchaser in further manufacture (see § 53.132),

- (ii) Section 4221(a)(2) of the Code, relating to sales for export (see § 53.133).

(4) *Duty of seller to ascertain validity of tax-free sale.* If the manufacturer at the time of its sale has reason to believe that the article sold by it is not intended for the exempt purpose indicated by the purchaser, or that the purchaser has failed to register as required, the manufacturer is not considered to have accepted certification from the purchaser in good faith, and is not relieved from liability under the provisions of section 4221(c) of the Code.

(5) *Information to be furnished to purchaser.* A manufacturer selling articles free of tax under this section shall indicate to the purchaser that:

- (i) Certain articles normally subject to tax are being sold tax free, and
- (ii) The purchaser is obtaining those articles tax free for an exempt purpose under an exemption certificate or its equivalent.

(6) The manufacturer may transmit this information by any convenient means, such as coding of sales invoices, provided that the information is presented with sufficient particularity so that the purchaser is informed that he has obtained the articles tax free and:

- (i) The purchaser can compute and remit the tax due if an article sold tax free for further manufacture is diverted to a taxable use,
- (ii) The manufacturer can remit the tax due with respect to an article purchased tax free for resale for use in further manufacture or for export if, within the 6-month period described in § 53.132(c) or § 53.133(c), the manufacturer does not receive proof that the article has been exported or resold for use in further manufacture, or
- (iii) The purchaser can notify the manufacturer if an article otherwise purchased tax free is diverted to a taxable use.

(c) *Evidence required in support of tax-free sales*—(1) *Purchasers required to be registered.* Every purchaser who is required to be registered (see § 53.140) shall furnish to the seller, as evidence in support of each tax-free sale made by the seller to such purchaser, the exempt purpose for which the article or articles are being purchased and the registration number of the purchaser.

Such information must be in writing and may be noted on the purchase order or other document furnished by the purchaser to the seller in connection with each sale.

(2) *Purchasers not required to be registered.* For the evidence which purchasers not required to register must furnish to the seller in support of each tax-free sale made by the seller to such purchasers, see paragraph (b) of § 53.133 for sales or resales to a foreign purchaser for export, paragraph (d) of § 53.134 for sales of supplies to vessels or aircraft, paragraph (c) of § 53.135 for sales to State and local governments, and paragraph (c) of § 53.141 for sales and purchases by the United States.

[T.D. ATF-308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF-380, 61 FR 37005, July 16, 1996]

§ 53.132 Tax-free sale of articles to be used for, or resold for, further manufacture.

(a) *Further manufacture*—(1) *In general.* Under prescribed conditions, an article subject to tax under Chapter 32 of the Code may be sold tax free by the manufacturer, pursuant to section 4221(a)(1) of the Code, for use by the purchaser in further manufacture, or for resale by the purchaser to a second purchaser for use by the second purchaser in further manufacture. See section 4221(d) (6) of the Code and paragraph (b) of this section for the circumstances under which an article is considered to have been sold for use in further manufacture. See section 6416(b)(3) of the Code and § 53.180 for the circumstances under which credit or refund is available when tax-paid articles are used in further manufacture.

(2) *Proof of resale for use in further manufacture.* See section 4221(b)(1) of the Code and paragraph (c) of this section for provisions under which the exemption provided in section 4221(a)(1) of the Code shall cease to apply in the case of an article sold by the manufacturer to a purchaser for resale to a second purchaser for use in further manufacture unless the manufacturer receives timely proof of resale for further manufacture.

(b) *Circumstances under which an article is considered to have been sold for use in further manufacture.* (1) For purposes

of the exemption from the manufacturers excise tax provided by section 4221(a)(1) of the Code, an article shall be treated as sold for use in further manufacture if the article is sold for use by the purchaser as material in the manufacture or production of, or as a component part of, another article taxable under chapter 32 of the Code;

(2) An article is used as material in the manufacture or production of, or as a component of, another article if it is incorporated in, or is a part or accessory of, the other article when the other article is sold by the manufacturer. In addition, an article is considered to be used as material in the manufacture of another article if it is consumed in whole or in part in testing such other article; for example, shells or cartridges that are used by the manufacturer of firearms to test new firearms. However, an article that is consumed in the manufacturing process other than in testing, so that it is not a physical part of the manufactured article, is not considered to have been used as material in the manufacture of, or as a component part of, another article.

(c) *Proof of resale for further manufacture*—(1) *Cessation of exemption.* The exemption provided in section 4221(a)(1) of the Code and described in paragraph (a) of this section in respect of an article sold by the manufacturer to a purchaser for resale to a second purchaser for use by the second purchaser in further manufacture shall cease to apply on the first day following the close of the 6-month period which begins on the date of the sale of such article by the manufacturer, or the date of shipment of the article by the manufacturer, whichever is earlier, unless, within such 6-month period, the manufacturer receives proof, in the form prescribed by paragraph (c)(2) of this section, that the article was actually resold by the purchaser to a second purchaser for such use. If, on the first day following the close of the 6-month period, such proof has not been received, the manufacturer shall become liable for tax at that time at the rate in effect when the sale was made but otherwise in the same manner as if the article had been sold by it on such first day at a taxable price equivalent to that at which the